Court No. 2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal From Order No. 127 of 2003

United India Insurance Co. Ltd. … **Appellant.**

Versus

Smt. Vimla Devi … **Respondents.**
and others.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 (***in short the Act)*** against the judgment and Award, dated 5-3-2003, passed in M.A.C.T. Petition No. 38 of 2001, Smt. Bimla Devi and others Vs. Sri Anand Ram Semwal and another, by the Motor Accident Claims Tribunal/ District Judge, Tehri Garhwal (***hereinafter referred to as the Tribunal),***whereby the learned Tribunal has awarded a sum of Rs. 6,50,000/- to the claimants as against the appellant-Insurance Company and directed to the pay the same within one month, failing with Interest @ 6% per annum shall also be payable, as mentioned in the impugned order. Aggrieved, the Insurance Company-O.P.No.2 has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the quantum of compensation including application of multiplier is inappropriate, the appellant was entitled to take defences under Section 170 of the Act and it has been contended the findings of the learned Tribunal are not based on evidence on record.

We have heard learned counsel for the appellant. Mr. D.S.Patni as well as learned counsel for the

claimant-respondent no. 1 to 6, Mr. Rakesh Thapaliyal, and have carefully gone through the entire material on record including the impugned judgment and award.

The only point pressed before us in appeal on behalf of the Insurance Company is that the multiplier of 20 applied by the learned Tribunal for determining the quantum of compensation is erroneous in view of the well settled law laid down by the Hon'ble Supreme Court, therefore, the award is liable to be modified.

Brief facts of the case are that Jaidev Prasad Mamgai sustained grievous injuries and consequently died as a result of injuries sustained by him in a motor accident occurred on 2.3.2001 at about 7.30 p.m. near village Khandogi, Police Station Tehri, involving Indica Car, which fell into a ditch as a result of rash and negligent driving by the driver of the ill-fated car. The claimants being dependents and legal heirs of the deceased have filed the claim petition. The O.P. No. 1, owner of the vehicle, Anand Ram, filed his written statement and denied the allegation that due to technical failure, the accident had occurred. The vehicle was duly insured and the all valid documents were possessed in respect of the vehicle in question. The driver of the car was holding valid driving licence, therefore, the insurance company is liable to pay compensation. Insurance Company-appellant also filed written statement and alleged that the driver was not holding valid driving licence and there has been breach of policy condition. The insured was not holding valid papers in respect of the vehicle involved in the accident.

On the pleadings of the parties, necessary issues were framed by the Tribunal. It has been held that the deceased died as a result of injuries sustained by him

due to rash and negligent driving of the vehicle UP 07L/9292 (Indica Car) by its driver. It has also been held the driver of holding a valid driving licence on the date of accident. The appellant has failed to lead evidence to substantiate its contentions. Insurance of the vehicle has not been challenged. The Tribunal has also held that the deceased was running a box industry and the income of the deceased was determined at Rs. 4000/- per month. The yearly income has thus been found to be 48,000/-and 1/3rd of the same has been deducted towards personal expenses of the deceased. The deceased was aged 28 years at the time of accident. The Tribunal has determined the amount of compensation by applying multiplier of 20, thereby total loss of dependency has been calculated as 32,000 x 20 =Rs. 6,40,000/-. In addition, the Tribunal has awarded lump sum amount of Rs. 10,000/- towards loss of consortium, funeral expenses, loss of estate, etc. thereby claim petition has been decree for total compensation of Rs. 6,50,000/- as mentioned earlier.

In this appeal, the only submission made on behalf of the appellant is that use of multiplier of 20 has wrongly been applied by the Tribunal, which is above the maximum limit of 18 as laid down by the Apex Court and, therefore, on this technical score, the argument has been advanced. It is now well settled law that the Insurance Company cannot file an appeal challenging the quantum of compensation and findings of rash and negligent driving including contributory negligence. In our opinion , the argument of the learned counsel is sustainable in view of the settled law of the Apex Court that the maximum limit of use of multiplier is 18. We are supported in out view by the pronouncement of the Hon'ble Supreme Court in the case of ***" U.P. State Road Transport Corporation and others Vs. Trilok Chandra and others" [(1996) 4 Supreme court***

Cases, 362] in which the relevant provisions of Section 163-A has also been dealt with and the provisions of Amendment Act No. 54 of 1994 was considered. In the concluding lines of paragraph no. 17, it has been observed that ***"According to this table the multiplier varies from 5 to 18 depending on the age group to which the victim belonged. Thus, under this Schedule the maximum multiplier can be up to 18 and not 16 as was held in Susamma Thomas case."*** In the present case, admittedly, the deceased Jaidev Prasad had died in a motor accident, who was about 28 years of age. Thus, the deceased comes in the age group of 25-30 years, therefore, in this case, the maximum limit of multiplier of 18 was permissible as Per Second Schedule of Section 163-A of the Act. Therefore, on this technical ground, we are inclined to accept the submissions of the appellant and we hold that the Tribunal has erred in applying multiplier of **20,** instead of **18,** Accordingly, the claimant-respondents are entitled to loss of income to the tune of 32000 x 18 =**5,76,000/-** rupees, instead of Rs. **6,40,000/-** as worked out by the Tribunal. The award of sum of Rs. 10,000/- towards loss of consortium, funeral expenses, etc. shall remain undisturbed, as given by the Tribunal. To the above extent alone, the impugned findings of the learned Tribunal deserve to be modified.

The appeal is allowed. The impugned award dated 5-3-2003 is modified and the compensation amount under the award shall be read as Rs.**5,86,000/-** instead of Rs. 6,50,000/-. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned.

26-08-2004 **(B.S. Verma, J.) (P.C. Verma,J.)**
RCP